

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. October 18, 2013
Debtor. . 10:00 a.m.
.

HEARING RE. MOTION OF DEBTOR, PURSUANT TO SECTION 105(a)
OF THE BANKRUPTCY CODE, FOR ENTRY OF AN ORDER EXTENDING
THE CHAPTER 9 STAY TO THE 36TH DISTRICT COURT
AND CERTAIN RELATED PARTIES
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE CLERK: All rise. Court is in session. Please
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: Good morning, everyone. Actually --
4 excuse me. Before we begin our court session today, I need
5 to review a brief issue of participant conduct I guess is the
6 right way to phrase it. We have been requested by the
7 District Court to enforce certain rules that will maintain as
8 much quiet on this floor as we can, and this is, of course,
9 not just today but every day, so I think you've probably
10 already experienced some of it. We have been asked only to
11 use the Lafayette Street side elevators and that when you all
12 come into the courtroom or leave the courtroom, you go
13 directly from those elevators to the courtroom and that you
14 not linger in the hall at all and that you maintain complete
15 silence in the hall. And you'll have to excuse me if I
16 periodically remind everyone about this throughout the course
17 of these proceedings. And now we are ready for our motion
18 here this morning.

19 MS. LENNOX: Thank you, your Honor. For the record,
20 Heather Lennox of Jones Day on behalf of the city. Your
21 Honor, I'll get into in a minute sort of why this motion came
22 up, but before I do that, I'd sort of just like to explain
23 some or just highlight some of the statutory bases that gave
24 rise to this motion.

25 The 36th District Court is basically Detroit's local

1 municipal court. It exists within the confines of the City
2 of Detroit, and it's created by statute. On May 28th, 2013,
3 because of its own operational difficulties that it was
4 having, the Michigan Supreme Court appointed Judge Michael
5 Talbot of the Michigan Court of Appeals as the special
6 judicial administrator of the 36th District Court, and Judge
7 Talbot has been working to improve the operations and the
8 efficiency of that court since that time. Judge Talbot is in
9 the courtroom today, your Honor.

10 The city, again, according to statute, is
11 responsible for maintaining and financing and operating --
12 the operations of the 36th District Court. In fact, in
13 fiscal year 2012, the court budget was about 37 million, if
14 I'm recalling correctly. 22 million of it came from the
15 city's general fund, and about 15 or so came from fines and
16 fees that are collected by the court. Those fines and fees
17 that are collected by the court itself are maintained in two
18 bank accounts that are in the court's name, and periodically
19 the court transfers those -- collects those funds and then
20 periodically transfers them into the city's general fund, and
21 the city pays for the payroll and vendor bills for the court
22 according to the court's budget that's been submitted
23 annually.

24 This motion comes about, your Honor, because in the
25 city's regular contact with Judge Talbot and the court's

1 other administrators, they continue to express uncertainty
2 about how our bankruptcy -- the city's bankruptcy would
3 affect their ongoing operations because the court is not a
4 city department. It is a separate entity and has its own
5 authority and operations. So while the city is continuing to
6 fund the reasonable and necessary --

7 THE COURT: Well, but pause there.

8 MS. LENNOX: Um-hmm.

9 THE COURT: It's important for the record here to be
10 as clear as possible about the relationship.

11 MS. LENNOX: Yes.

12 THE COURT: So you say the court is a separate legal
13 entity?

14 MS. LENNOX: The court is created by statute as a
15 subdivision of the courts of Michigan, which is a separate
16 judicial branch. It is not part of the city department. The
17 reason it has a line item in the city's budget is because
18 pursuant to state statute, the local unit is responsible for
19 funding its operations, but the city doesn't have control
20 over how the court is operated or the city does not help
21 prepare the court's budget. I think the city can have
22 conversations with the court about the budget, but that is
23 the court's responsibility. The court deals with
24 administration.

25 THE COURT: So the court's employees are not city

1 employees?

2 MS. LENNOX: The court's employees are not city
3 employees. Let me make sure I've got that correct, your
4 Honor. Let me check my notes here, but I believe that is
5 correct.

6 THE COURT: Perhaps Judge Talbot can help us with
7 that.

8 MS. LENNOX: Yes. I believe -- that is correct. I
9 am confirmed correct.

10 THE COURT: Okay.

11 MS. LENNOX: I was looking at that statute last
12 night. It's Subsection 13.

13 THE COURT: So the employees are not city employees,
14 but you said a moment ago -- I think you said a moment ago --

15 MS. LENNOX: The city funds payroll?

16 THE COURT: -- the city pays them --

17 MS. LENNOX: Let me -- sure.

18 THE COURT: -- out of its own accounts.

19 MS. LENNOX: Let me explain how -- and it's taken us
20 several days to get through the mechanics of this. The
21 mechanics are very convoluted.

22 THE COURT: Um-hmm.

23 MS. LENNOX: As I understand it, the court -- the
24 court itself maintains actually six separate accounts. It
25 has -- let me get this out here. They have three accounts

1 that relate to bonds that are held in trust.

2 THE COURT: Three accounts that relate to what?

3 MS. LENNOX: Bonds. Those are trust accounts for,
4 you know, bonding fees and things like that. There is one
5 account that the court maintains for fees to be paid to
6 witnesses, and then there -- as I mentioned, there are two
7 accounts that are maintained in the court's name that contain
8 the revenues that are --

9 THE COURT: Why would the court be paying witnesses?

10 MS. LENNOX: If there's a state obligation for
11 expense reimbursement and things like that.

12 THE COURT: The witnesses or jurors? Is it
13 witnesses or jurors?

14 MR. GREGG: It's witnesses, your Honor.

15 MS. LENNOX: It's witnesses.

16 THE COURT: Witnesses. Okay.

17 MS. LENNOX: Again, all by state statute. And the
18 remaining two accounts are the ones that I think really are
19 at issue here, and those are the accounts maintained in the
20 court's name, not the city's name, that collect the fees and
21 fines that the court is entitled to impose. Those
22 accounts -- the court does not maintain, as far as we know, a
23 disbursement account where it can write checks and pay
24 people, so what it does is it transfers from the two accounts
25 periodically -- I believe it's monthly -- sweeps those

1 accounts, transfers them into the city's general fund, and
2 then the city commingles their money with the general fund,
3 plus the city has additional obligations over and above what
4 the fees could bring in, and then funds the court budget
5 according to -- out of its own accounts, and so the payroll
6 accounts for the court employees are actually city accounts
7 that are maintained and paid out of the combination of these
8 fees that come in plus the city's general fund revenue.

9 THE COURT: Um-hmm. And what about the other
10 periodic operating expenses, utilities --

11 MS. LENNOX: They are paid directly by the city out
12 of the city's accounts.

13 THE COURT: Billed directly to the city?

14 MS. LENNOX: I'm sorry?

15 THE COURT: Billed directly to the city?

16 MS. LENNOX: No. I believe they're billed to the
17 court. The court then transmits the bills to the city. It
18 sounds to me like there's fairly regular communication
19 between the court and city employees. And then they go into
20 the city payroll system, and the city pays them out of the
21 city's cash. And so the particular concern that we have, of
22 course, is that because the city is making the payments and
23 because the funds are commingled and because the fines and
24 the fees that are collected by the court are necessary for
25 the funding of the court, the concern came up -- and I just

1 want to make very clear that the city is continuing to fund
2 the reasonable and necessary expenses of the operation -- for
3 the operation of the court, but there's a concern that if a
4 claimant -- a litigation claimant that may have a very large
5 judgment against the court were to try to attach or garnish
6 the court's two revenues accounts -- and, you know, if the
7 court sends us 14, \$15 million a year, those accounts can
8 grow to be fairly sizeable even if they're transferred
9 monthly -- if they seek to attach or garnish that, then I
10 think the city is faced and the courts are faced with two
11 difficult outcome -- potential outcomes. One is that the
12 court could simply just have insufficient funds to operate
13 because the city wouldn't pay it, and, again, I want to be
14 very clear what we're asking about here. We are only seeking
15 to stay collection and enforcement of monetary claims that
16 may arise against the 36th District Court that arose before
17 the city's petition date, so anything that the city would
18 consider a pre-petition claim, the city is not in a position
19 to pay. We're not opposing those claims being liquidated.
20 We're just opposing collection efforts with respect to those
21 claims.

22 So, again, if somebody with a large judgment sought
23 to attach some of those revenue accounts, which can have
24 fairly sizeable sums in them at any given time, again, the
25 two things that we think would happen are the court would

1 have insufficient funds to operate itself because the city --
2 those funds would be gone, and the city would not be
3 replenishing them because it was on account of a claim that
4 the city wasn't going to pay, or the city would essentially
5 be forced, if it wanted its courts to operate, to pay what is
6 a pre-petition claim against the city, and we think that
7 would violate a bunch of bankruptcy statutes.

8 And so that is the particular conundrum that gave
9 rise to this motion. That is the particular conundrum that
10 was giving the court personnel a great deal of concern,
11 particularly as they're trying to gain some certainty for
12 their own operations as Judge Talbot is doing the work that
13 he's doing trying to correct the operations of that court, so
14 that's what gave rise to this motion, and that is the
15 particular harm that we're seeking to stay.

16 At some point, this will all have to be figured out
17 probably in the context of the city's plan of adjustment,
18 again, if eligibility is decided in the city's favor, but for
19 now, so the court can have some certainty about its
20 operations, so there isn't a risk of budget funding holes
21 both at the court and then at the -- potentially at the city,
22 we brought the relief before your Honor.

23 THE COURT: So you're not seeking to stay any orders
24 of reinstatement of employees?

25 MS. LENNOX: No. This is purely monetary --

1 THE COURT: You're not --

2 MS. LENNOX: -- claims.

3 THE COURT: I'm sorry.

4 MS. LENNOX: I'm sorry, your Honor. It's purely
5 monetary relief.

6 THE COURT: What about prospective monetary relief?

7 MS. LENNOX: In what sense, your Honor?

8 THE COURT: So, for example, if an arbitrator says
9 that Employee X's pay should be a dollar an hour more in the
10 future --

11 MS. LENNOX: Um-hmm. To the --

12 THE COURT: I don't know. I mean we're sort of
13 contemplating the future here, but --

14 MS. LENNOX: Right.

15 THE COURT: -- do you seek stay of that?

16 MS. LENNOX: Normally what you have when that comes
17 into effect is that's sort of an award of -- well, we've got
18 back pay awards, which we think clearly we would seek to
19 stay.

20 THE COURT: Um-hmm.

21 MS. LENNOX: If the award is you have to reinstate
22 an employee, and, oh, by the way, when you reinstate them,
23 their salary is "X," which happens to be higher than their
24 old salary, I think, you know, that's kind of a reinstatement
25 going forward thing. And if we have to employ the person, we

1 have to employ the person, but anything that would relate to
2 sort of what we would view as the city -- you know, pre-
3 petition conduct vis-a-vis the city's petition date -- and,
4 again, it depends on how these awards are phrased, so it's
5 very difficult to say generally speaking, but we are treating
6 this similar to what we do with city litigation, which is if
7 it arises from a post-petition context, post-petition set of
8 events, it goes forward in the ordinary course, and that's
9 the same kind of construct that we would be looking for for
10 the court, but I think right now all we're looking at is
11 conduct and events that occurred prior to the city's petition
12 date.

13 THE COURT: Thank you.

14 MR. SCHNEIDER: May it please the Court, Matthew
15 Schneider, chief legal counsel for the Michigan Department of
16 Attorney General. Your Honor, I'm here on behalf of the
17 state. It appears that in this case there's some question
18 about the source of funding for the 36th District Court, and
19 I can explain a little bit to the Court, if it would like,
20 about how this works.

21 THE COURT: Sure.

22 MR. SCHNEIDER: Essentially, there's two different
23 areas here. One is the statutory scheme, and one is
24 constitutional. This is a District Court, and what state law
25 does with District Courts, it divides it into three classes.

1 First-class District Courts are like, you know, Bay County.
2 There's one court for the entire county. A second-class
3 District Court would be kind of a hybrid mechanism such as in
4 Ann Arbor. You've got a city court paid for by the city, but
5 then out in Chelsea the county pays for that court. Here we
6 have purely a third-class District Court in Wayne County,
7 which is a city-run court, and what I mean by that is the
8 funding mechanism for that court, 36th District Court, is
9 purely the city, and the city is responsible for paying that.
10 We know that because statute lays out in 600.8104(2) that the
11 district funding unit is what it's called is responsible for
12 operating that court and paying for it, so the legislature
13 has already made a determination that the payment to support
14 that court will be done by the city. The reason why the
15 state --

16 THE COURT: Does the statute say the city shall
17 operate the court or just pay for it?

18 MR. SCHNEIDER: It's operating. It says, quote, "a
19 district funding unit shall be responsible for maintaining,
20 financing, and operating the court only within its political
21 subdivision." Now, we know, in effect, of course, the judges
22 are, you know, not city employees. The employees are, you
23 know, more judicial employees as well, so there is some
24 mixing here, but what is important to note is the funding
25 mechanism. The funding mechanism always remains with the

1 city. The Michigan Supreme Court --

2 THE COURT: Well, it's not that simple here in
3 bankruptcy because if the court is a department of the city,
4 then claims against it are already stayed, right, because
5 claims against the city are stayed? If it's a separate
6 entity, then we have to talk about the extension of the stay,
7 which is what the city seeks here. And I'm wondering, in
8 light of the statutory obligation that the city has to
9 operate the courts, why it's a separate entity.

10 MR. SCHNEIDER: Because there's a difference here
11 between who's responsible for funding and who's responsible
12 for the court itself, so --

13 THE COURT: What does "operate" mean?

14 MR. SCHNEIDER: Well, you know, let me give you an
15 example of this. When you go into the 36th District Court
16 and you look behind you, it is the seal of the State of
17 Michigan. It is not the seal of the City of Detroit. So we
18 know that the overall operation of authority is from the
19 state. The statute simply lays out who funds it. And the
20 reason why the state is participating here today in front of
21 you, your Honor --

22 THE COURT: You told me the statute does more than
23 say who funds it. It also says who operates it.

24 MR. SCHNEIDER: But there's a difference between
25 operation as to, you know, what is the role of the judge. I

1 mean the judge is doing the operations of the court under
2 the -- in many respects --

3 THE COURT: Well, the judge is making the decisions
4 in the cases that appear before him or her.

5 MR. SCHNEIDER: That's true, and if you look at the
6 Michigan Court Rules, for instance, the chief judge rule, the
7 chief judge of the court is responsible for the hiring and
8 dismissing of the employees within the court. The city
9 doesn't do that. So that's an example of an operation that
10 takes place by the court itself and not by the city.

11 THE COURT: Um-hmm.

12 MR. SCHNEIDER: The reason why the state --

13 THE COURT: And all concerned thinks that's
14 consistent with the statute that says the city operates the
15 Court?

16 MR. SCHNEIDER: Well, yes. I mean I think we're
17 talking about the district funding unit and what the funding
18 unit has to do, and I think we're talking about terms of
19 operation in terms of operational funding. And the reason
20 why the state here is participating is because --

21 THE COURT: So whatever "operate" means in the
22 context of that statute, it has to be consistent with the
23 concept of the courts as an independent entity under the
24 supervision of the Michigan Supreme Court by constitution?

25 MR. SCHNEIDER: Sure, because we have one court of

1 justice.

2 THE COURT: Okay.

3 MR. SCHNEIDER: So the case law that is put forth by
4 the AFSCME addresses this one court of justice issue, and
5 they're citing to some cases such as Grand Traverse, but
6 those cases really stand for the proposition that it is
7 ultimately not the state's responsibility to do the funding.
8 It is the local funding unit's responsibility. I won't go
9 further on that, but if you have any questions about that,
10 I'd be happy to answer them.

11 THE COURT: Well, I guess the question that the
12 objecting parties are raising is if there is a shortfall in
13 the funding of a court which the local entity that's
14 otherwise obligated to pay can't pay, what happens?

15 MR. SCHNEIDER: A judicial branch -- the state
16 judicial branch can compel funding, but that doesn't mean
17 that they can compel the legislature or the state treasury.
18 None of the cases have ever said that.

19 THE COURT: What happens?

20 MR. SCHNEIDER: Well, a judicial branch entity could
21 compel the funding unit to pay. What your question is is
22 what --

23 THE COURT: They can't.

24 MR. SCHNEIDER: -- if they don't have any money.

25 THE COURT: Yes.

1 MR. SCHNEIDER: Okay.

2 THE COURT: What happens?

3 MR. SCHNEIDER: I don't believe that we've crossed
4 that bridge yet in this case. I don't believe that that was
5 contemplated perhaps within -- when this statute was written,
6 so I can tell you what --

7 THE COURT: Still waiting for an answer.

8 MR. SCHNEIDER: Well, I can tell you what the answer
9 wouldn't be. The answer wouldn't be --

10 THE COURT: I mean, look, you know, we've got
11 pension people who say we have a constitutional right to
12 unimpeded pensions; right? Okay?

13 MR. SCHNEIDER: Um-hmm.

14 THE COURT: And now you're telling me that the
15 courts can say we have this constitutional right to full
16 payment of our expenses, and, as I said the other day, what's
17 a right worth if the obligee doesn't have the money to pay?

18 MR. SCHNEIDER: Well --

19 THE COURT: What happens?

20 MR. SCHNEIDER: I don't know that I can answer that
21 question, but I can answer it this way. I do know that under
22 the current statutory scheme, neither the statute nor the
23 case law would take that obligation and foist it back on the
24 state, so that is not the answer under the current rubric.

25 THE COURT: Okay. So the city has either got to

1 find the money or shut the court down?

2 MR. SCHNEIDER: Well, if we're at that point, you
3 know --

4 THE COURT: If the city can't pay, are those the
5 only two choices?

6 MR. SCHNEIDER: Then a judicial branch entity could
7 compel the city to pay.

8 THE COURT: In preference to all its other
9 creditors?

10 MR. SCHNEIDER: Instead of compelling the state
11 treasurer.

12 THE COURT: Including the pension obligors or the
13 retirees, who your office also says has a priority?

14 MR. SCHNEIDER: Well, your Honor, I'm not trying to
15 backtrack, but I am trying to say that, you know, although I
16 know we're -- if we're still not answering --

17 THE COURT: Look, I have to ask tough questions
18 here; right?

19 MR. SCHNEIDER: Certainly.

20 THE COURT: So, you know, we all have to have
21 answers to these tough questions.

22 MR. SCHNEIDER: Well, that's true, and I've given
23 you an answer in reverse. It might not be the answer we want
24 to hear, but the answer is the statute lays out that the
25 state is not the funding unit.

1 THE COURT: The city can't print money.

2 MR. SCHNEIDER: I understand that. The
3 legislature -- perhaps the legislature, if they felt that
4 this was --

5 THE COURT: This is just a preview of the questions
6 you're going to get when you argue to me at some future point
7 about the rights of retirees.

8 MR. SCHNEIDER: Perhaps.

9 THE COURT: Everyone is claiming a priority here.

10 MR. SCHNEIDER: I'm not disagreeing with you, your
11 Honor.

12 THE COURT: All right. I've pressed you hard
13 enough.

14 MR. SCHNEIDER: Okay. Thank you. Do you have any
15 other questions?

16 THE COURT: Many, but, like I say, I've pressed you
17 hard enough.

18 MR. SCHNEIDER: That's what I'm here for. Thank
19 you.

20 MR. GREGG: Good morning, your Honor. John Gregg on
21 behalf of the 36th District Court. As the Court is aware,
22 the Honorable Michael Talbot is present as is Tom Kienbaum,
23 special counsel to the court, and Deborah Green, the state
24 court -- from the State Court Administrative Office. She is
25 the Region 1 director. I'll be somewhat brief, and perhaps

1 you'll pepper me with questions or perhaps you'll let me off,
2 but --

3 THE COURT: Well, you've heard my questions, so I
4 invite whatever answers you can give.

5 MR. GREGG: And I don't know that I can give any
6 more than what Mr. Schneider has already presented to the
7 Court --

8 THE COURT: Okay. Fair enough.

9 MR. GREGG: -- but I did want to supplement the
10 remarks that Ms. Lennox said earlier and, in particular, with
11 respect to the two revenue accounts that are of utmost
12 importance not only to the court but also to the State of
13 Michigan as the beneficiary of those accounts. There are the
14 two revenue accounts which are used for collecting fines and
15 penalties. Pursuant to separate statute, a statute
16 separate --

17 THE COURT: Fines and fees?

18 MR. GREGG: Fines, fees, and penalties, yes.
19 Pursuant to a separate statute other than the funding
20 requirement statute, which is 600.8103, 600.8379 requires
21 that the revenues be transmitted actually, quote, unquote,
22 "paid by the court over to the state." When those amounts
23 are paid over -- excuse me, not the state, to the city. When
24 those amounts are paid over to the city, they are not
25 automatically incorporated into the funds that are then used

1 to pay the trade vendors and other creditors of the court.
2 Instead, the city commingles those and is required regardless
3 to advance funds or pay the obligations of the court, and so
4 I just want to make that distinction that there is not a
5 requirement -- a joined requirement. In other words, there's
6 a separate requirement that the court transmit the funds to
7 the city, and there's a separate requirement that the city
8 fund the operations of the court. The concerns of --

9 THE COURT: What you mean by that, just to tie a
10 ribbon on it, is if for any reason the court doesn't transmit
11 those funds either because it doesn't or because they've been
12 garnished or executed on, the city still has to pay those
13 operational expenses.

14 MR. GREGG: That is exactly what I mean. They are
15 separate and distinct obligations under two different
16 statutory directives. The concerns of the court here today
17 are fairly obvious, your Honor. It maintains these accounts.
18 It is required to transmit these funds to the city. It is
19 facing a fairly large arbitration award, which is currently
20 subject to appeal. It is also addressing various other
21 claims for monetary relief and in the future believes it may
22 be subject to another claim for monetary relief as a result
23 of a collections contract. The court entered into an
24 arrangement with a law firm in Texas, the Linebarger law
25 firm, whereby the law firm would collect amounts due to the

1 court. In exchange, the law firm was to receive 20 percent.
2 The court has been working with the Linebarger law firm to
3 wind down that agreement, and they would both mutually exit
4 the arrangement. One of the local counsel law firms used by
5 the Linebarger firm has objected to the wind-down of that
6 arrangement, and in all likelihood there is going to be a
7 formal dispute, a legal action filed, and so we are
8 anticipating that at some point in the future.

9 The concern of this court, of course, is a judgment
10 creditor, as Ms. Lennox stated, garnishing the funds kept in
11 these two revenue accounts maintained by the city. In
12 addition, in the past, judgment creditors have pulled their
13 trucks up to the court and have attempted to haul away the
14 personal property of the court. As remote as that seems, it
15 has, in fact, happened. Now, there is a flaw in any judgment
16 creditor's argument that attempts to do that in that the
17 majority of the personal property at the court is owned by
18 the city. However, there are some items of personal property
19 that are actually owned by the court. In the event that a
20 judgment creditor were to seek to execute and levy on the
21 personal property, the automatic stay would extend to the
22 city's property. The non-city property the court would take
23 the position that it's public property and it's dedicated to
24 a public use, and it is, therefore, held in trust for the
25 public and not subject to collection, but that has not

1 stopped parties in the past from attempting to do this, and
2 so the harm to the city as a result of these attempts would
3 be a disruption in the court's operations. And I can't
4 represent to the Court that it would be a massive disruption
5 in operations, but it would clearly be an impediment to the
6 day-to-day functions that Judge Talbot has worked so hard to
7 correct. And so because of the joined nature of the
8 financing arrangement and the potential attack from the
9 judgment creditors, the court believes it's in the city's
10 best interest to have the stay extended to the court up until
11 the point of a plan of adjustment. It agrees with the city
12 that nonmonetary claims would be allowed to proceed whereas
13 monetary claims could be liquidated. There would just be a
14 stay on the collection.

15 THE COURT: Am I correct that the attorneys
16 defending claims against the city are not from the city law
17 department?

18 MR. GREGG: They are not, your Honor. They're
19 separately engaged law firms. I believe there are
20 approximately seven or eight of them. And many of the claims
21 that have been brought against the city -- or excuse me --
22 the court -- the court believes are without merit, and in
23 some instances it would be the court's preference to allow
24 these claims to be adjudicated.

25 THE COURT: And the fees of those private attorneys

1 are paid by the city through the same funding mechanism that
2 we've been discussing?

3 MR. GREGG: Yes, they are, your Honor. Yes.

4 THE COURT: Okay.

5 MR. GREGG: And historically when judgments have
6 been entered, the city has satisfied those judgments on
7 behalf of the court as it's required to do.

8 THE COURT: All right.

9 MR. GREGG: Thank you.

10 THE COURT: Anyone else want to speak in favor of
11 the motion? All right. Ms. Clark.

12 MS. CLARK: Your Honor, Tracy Clark appearing on
13 behalf of the Local 3308 and 917 American Federation of
14 State, County and Municipal Employees. Your Honor, the
15 locals have indicated that they have various pending claims
16 against the 36th District Court on behalf of their members.
17 These members are either employees of the District Court or
18 former employees of the District Court. Some have waited
19 over nine years to be made whole by the District Court, and
20 now they're being told that they have to wait again.

21 Your Honor, as we pointed out in our brief, I want
22 to indicate that under 105(a) seeking an injunction would
23 require an adversary proceeding, and I know your Honor has
24 made it -- has thoughts on that from a previous proceeding,
25 so I won't belabor it here, but I want to point out that it

1 is an issue, and it is addressed in the brief. So from there
2 we'll move on to --

3 THE COURT: Well, but let me stop you there. Is
4 there anything about the request in this context that
5 suggests a different ruling on that issue from the prior
6 ruling?

7 MS. CLARK: Well, yes, your Honor. I believe that,
8 you know, the fact that we are dealing with people who have a
9 constitutional right to pursue their claims under the
10 Michigan Constitution, that they should have an opportunity
11 to have an adversary proceeding and be able to provide your
12 Honor with an explanation of the harms that have been -- that
13 they have incurred, conduct discovery in connection with the
14 state's obligations, and be able to be provided due process,
15 and that would only come in the form of an adversary
16 proceeding, which is required under 7017.

17 THE COURT: Well, if necessary, you can have that
18 discovery in this context, too, can't you?

19 MS. CLARK: Yes, your Honor. We could do a
20 contested matter. I think that the proceedings under an
21 adversary proceeding are more structured and will provide the
22 due process that the locals are looking for and also, your
23 Honor, to go through the injunction elements as far as that
24 goes. There has -- I guess the briefs did address the
25 injunction elements, but there really hasn't been any

1 discussion on that today. The original brief did not bring
2 up the fact that the four elements have to be established.

3 THE COURT: Right.

4 MS. CLARK: So, your Honor, what I'm hearing today
5 as far as the harm is this -- basically other than some desks
6 or things like that at the court, it's about these revenue
7 accounts, and these revenue accounts, it's my understanding,
8 belong to the District Court, so to the extent that anything
9 happens with those revenue accounts, that's a harm to the
10 District Court, and the District Court, as indicated earlier,
11 is a separate and distinct entity.

12 THE COURT: Well, how is it a harm to the District
13 Court because the city has to pay for this -- for the court's
14 operations regardless?

15 MS. CLARK: Well, there's a question there.
16 Actually, there's two questions there. First of all, the
17 court has -- in their brief at paragraph 28 says these
18 revenues are property of the city, and any attempt to garnish
19 those accounts is a violation of the automatic stay, so
20 that's a question right there. Could these accounts even be
21 garnished? And the second issue is --

22 THE COURT: Well, what position do you take on that?

23 MS. CLARK: Your Honor, I have not looked into
24 whether or not those funds could be garnished or not. I
25 think that it's up to the parties that -- the moving parties

1 here to establish whether or not this is even a problem
2 because if they're subject to the stay, there should be no
3 motion pending.

4 THE COURT: The city's position is if they are
5 property of the court, it needs an extension of the stay. If
6 they are property of the city, then it's stayed regardless,
7 but it wants to have the stay regardless.

8 MS. CLARK: Right. But I mean there's no reason to
9 even have this motion if they're property of the city.

10 THE COURT: Right, but you're not willing to concede
11 that at this point.

12 MS. CLARK: No. And to the extent that it's not
13 property of the city, then your Honor pointed out, "What
14 happens?" I don't know what happens, but the courts -- the
15 courts that have addressed the funding issue in 600.8103 have
16 pointed out that the statute only says that the court is
17 responsible for financing and operating the District Court
18 within its subdivision. It's not -- it doesn't say that
19 they're responsible for paying judgments. And in addition to
20 that, the -- this missing element of who will pay for this
21 judgment has been addressed by the courts, and the courts
22 question the ultimate obligor for judgments or who actually
23 has to have -- pay for the court to continue to operate.

24 THE COURT: Well, but if it's not the city, who else
25 would it be?

1 MS. CLARK: It would be the state under the
2 Constitution. The courts have said -- and actually Judge
3 Rosen said after reviewing in connection with a sovereign
4 immunity issue with respect to the first element in a
5 sovereign immunity is to show that the state has to pay for
6 the funding of the entity that's looking for the sovereign
7 immunity. And Judge Rosen in Dolan said it cannot be said
8 with any degree of confidence that the State of Michigan
9 bears no potential legal liability for any judgment that the
10 plaintiff might obtain against the 15th District Court. That
11 was a judgment that had been obtained against the District
12 Court, and the court was considering whether sovereign
13 immunity applied. And in an unpublished --

14 THE COURT: So are you saying you want to preserve
15 whatever claim you might have against the state arising from
16 any judgment or award against the District Court?

17 MS. CLARK: No, your Honor. What I'm saying is the
18 state has an obligation to operate or to continue funding the
19 court, so there's going to be no harm to the city. The city
20 can stop paying --

21 THE COURT: You want this Bankruptcy Court to hold
22 that the State of Michigan is obligated to pay these
23 judgments?

24 MS. CLARK: No, I do not, your Honor.

25 THE COURT: I thought that's what I heard.

1 MS. CLARK: No. The State of Michigan would be
2 required under the Constitution -- when the court is
3 faltering, the State of Michigan would have an obligation to
4 step up and fund the operation.

5 THE COURT: Okay. But my question for you is who
6 makes that determination because what you said was that Judge
7 Rosen merely held that it can't be excluded as a possibility.
8 He didn't hold that the state is responsible; right?

9 MS. CLARK: Correct, your Honor.

10 THE COURT: Okay. So who's going to make the
11 decision about whether the state is responsible?

12 MS. CLARK: Your Honor, that decision -- and
13 actually we cited in the brief Judicial Attorneys Association
14 versus State, and the court said in that case, the Supreme
15 Court of Michigan, "Despite the complications of the trial
16 court environment, the case law, taken as a whole, has come
17 to strongly affirm that the fundamental and ultimate
18 responsibility for all aspects of court administration,
19 including operations and personnel matters within the trial
20 courts, resides within the inherent authority of the judicial
21 branch," and they're referring to the judicial branch of the
22 State of Michigan, so that would be who would have to step up
23 and require that the court continue to operate. It would be
24 the judicial branch of the State of Michigan.

25 THE COURT: Is there a budget for the judicial

1 branch of the State of Michigan within the State of Michigan
2 budget?

3 MS. CLARK: Not that I'm aware of, your Honor. I
4 don't know. That I cannot answer. The funding -- there's
5 other people here that have much more information on the
6 funding of the courts than I do, but that's something I can't
7 answer. All I know is that they have the inherent authority
8 to require the state legislature to fund or continue the
9 funding for the court.

10 THE COURT: Mr. Schneider says the only inherent
11 authority under the statute is to compel the local political
12 subdivision, in our case, the City of Detroit, to pay --

13 MS. CLARK: Right.

14 THE COURT: -- their operations expenses, including
15 a judgment.

16 MS. CLARK: But there has to be a -- there has to be
17 a way around that because the City of Detroit can't pay.
18 It's in bankruptcy, and it's -- there's an automatic stay in
19 place where no one can pursue the City of Detroit for
20 collection, so there has to be a way around that, and that
21 would be up to the state to continue those operations.

22 THE COURT: Well, we're not talking about not paying
23 these claims at this point in time. We're only talking about
24 staying the collection of them; right? That's what an
25 automatic stay does.

1 MS. CLARK: That's true. And, your Honor, that's
2 another issue. Why stay these proceedings? They're not
3 going to go away. These obligations --

4 THE COURT: Well, they don't want to stay the
5 proceedings. They want to stay collection of any judgment or
6 arbitration award.

7 MS. CLARK: That's correct, but these obligations
8 are not going to be part of the plan. This is -- these are
9 not obligations of the city, so the stay is just delaying the
10 inevitable, and I'm not sure what good that does anyone.

11 THE COURT: Why wouldn't they be part of a plan?

12 MS. CLARK: Because they -- the same reason that the
13 stay doesn't apply. The court is not the city. The
14 obligations here are court obligations, not city obligations,
15 and the city does not have to, you know, focus its efforts on
16 defending these proceedings. It doesn't have to -- it's not
17 a named party. It never has been a named party. That's the
18 difference here between --

19 THE COURT: What will happen to the courts of the
20 city, the 36th District Court, if this motion is denied and
21 these judgments or arbitration awards go to collection and
22 they are collected?

23 MS. CLARK: What will happen to -- I'm sorry. What
24 will happen --

25 THE COURT: What will happen to the courts?

1 MS. CLARK: It's my -- based on what I've seen in
2 the Constitution and in the case law, the state would step up
3 and continue to fund the courts. Actually, I want to
4 refer --

5 THE COURT: But the state doesn't fund the court
6 now. The city does.

7 MS. CLARK: That's correct, but if they can't, if it
8 stops making the payments -- and actually in the city's brief
9 it indicates that they're not paying all of the obligations
10 of the court now. They're only paying certain ones to
11 keep -- continue operations.

12 THE COURT: Um-hmm.

13 MS. CLARK: And I'd also like to point out to your
14 Honor that in an unpublished opinion by the Sixth Circuit,
15 Barachkov versus 41B District Court, the Sixth Circuit viewed
16 600.8103 a little differently than the parties are here, and
17 the Sixth Circuit recognized that the state -- that the
18 statute establishes only that the local government unit
19 provides operational financing for the District Court, but
20 the statute does not conclusively state who will pay
21 judgments against the court. So there's various questions
22 raised by various courts about who would be obligated to pay
23 these -- make these payments and to continue the operations
24 of the court absent a local funding unit being able to make
25 these payments.

1 So, your Honor, the city has not shown that the
2 District Court -- it has shown maybe that the District Court
3 could be harmed, but it's not showing that the city has been
4 harmed or that any judgment against the District Court would
5 not --

6 THE COURT: Well, wouldn't the city be harmed if
7 collection action resulted in shutting down the courts?

8 MS. CLARK: Again, we have to go back to the
9 Michigan Constitution. The state would have to step up.

10 THE COURT: So the District Court would have to file
11 a lawsuit naming who for an injunction requiring funding or
12 payment of the judgments?

13 MS. CLARK: I have to admit, your Honor, this has
14 never come before, so I can't really speak to that. I'm
15 assuming that they would name the state legislature to fund
16 the judgments -- or to fund the operations actually. Your
17 Honor, the state is --

18 THE COURT: And the city would have to pay whatever
19 lawyers the District Court decides to retain for that
20 purpose?

21 MS. CLARK: The city doesn't have to pay. They
22 are -- they have an automatic stay in place.

23 THE COURT: Well, Mr. Gregg doesn't work for free,
24 assuming that's who they would hire.

25 MS. CLARK: Those are the -- I mean, like I said,

1 this is an unusual circumstance. We've never had a
2 circumstance where a funding unit just cannot pay and has the
3 cloak of the automatic stay around it so that it can't be
4 forced to pay, so, your Honor, we would request that this
5 motion be denied.

6 THE COURT: Thank you.

7 MS. LENNOX: Your Honor, if I may, a brief response
8 to some of the points made by all the other counsel. Your
9 Honor, I have to admit that the questions that your Honor is
10 asking are exactly the questions that we struggled with when
11 first trying to figure out what the relationship between the
12 court and the city really is and then, secondly, trying to
13 noodle through the issues that are the subject of the motion.
14 And there may be a couple of things that may provide some
15 clarity because I will tell you that the state of the law
16 right now is less than crystal clear on some of these issues.

17 First of all, I do think what we said before
18 about -- and what Mr. Schneider emphasized that the courts
19 being part of the state court system is true. To your
20 Honor's question about who operates the courts, again, you
21 have conflicting statutes because the funding statute says
22 you have to provide the funding to, you know, operate the
23 court, but in another portion of the same act at Michigan --
24 MCL Section 600.8271, Subsection 17, where it talks about the
25 operation -- it's called the Operation of the District

1 Court -- this says that the role of the chief judge under
2 this section is that of the principal administrator of the
3 officers and personnel of the court and is not that of a
4 representative of the source of funding, again, showing a
5 separation. Neither the judges nor the employees, at least
6 for the 36th District Court in Detroit, are employees of the
7 city so -- and they've traditionally had no day-to-day
8 operational control over the court. That's really handled by
9 the chief judge, and so that led us, notwithstanding all
10 these potentially technically conflicting provisions, to
11 believe that they were separate and they weren't -- because
12 the first question was is are they part of my bankruptcy, do
13 we have to worry about this stuff at all, right, because if
14 they -- we thought they were part of the city, then we
15 wouldn't have to be here, so we did look at that.

16 THE COURT: But the question Ms. Clark -- one of the
17 questions Ms. Clark raises is what harm would there be to the
18 city if these two accounts were garnished even to the extent
19 of \$5 million?

20 MS. LENNOX: Um-hmm. So -- and that leads into the
21 colloquy that your Honor had with several of the attorneys
22 about what does this inherent power really mean, and the
23 way -- I think the leading case on this is the Grand Traverse
24 case that was issued by the Michigan Supreme Court in 2006,
25 and it's cited in all of the people -- all of the papers.

1 And I have to say that the state of funding, local funding of
2 the courts in Michigan is pretty unclear, and I think the
3 issue that you have before us today facing us is *sui generis*,
4 but if you read Grand Traverse, the inherent authority of a
5 court --

6 THE COURT: You know, just for whatever it's
7 worth --

8 MS. LENNOX: Um-hmm.

9 THE COURT: It's probably nothing, but it hardly
10 feels right for a federal Bankruptcy Court -- a federal
11 Bankruptcy Court -- to be making decisions about who's
12 required to fund what within the Michigan judiciary.

13 MS. LENNOX: I could not agree more, your Honor, and
14 that is exactly where I was going. I think -- here's the
15 reasoning that the city went through in trying to figure this
16 out. Under the holding of Grand Traverse and all of the
17 language that was employed by the Michigan Supreme Court,
18 this inherent authority is limited. First of all, we have
19 the bankruptcy issues, which are the city is not required to
20 pay pre-petition claims. If there are unpaid claims of the
21 36th court, you know, there's a view that the 36th court has
22 a pre-petition claim against the city, and that'll get taken
23 care of in the plan. What we're dealing with is sort of the
24 extension of that, of, well, what do you do with their
25 creditors when the city has to pay their creditors? I mean

1 that's the extension problem we're looking at, and so there's
2 a colloquy about can the court force the funding unit to pay.
3 Now, certainly we have a stay that couldn't do it. We have
4 conflicting priorities, and the priorities of the Bankruptcy
5 Code -- exactly as your Honor said, everybody thinks they
6 have a priority, and the stay is designed to stop that, and
7 the Bankruptcy Code deals with priorities. But if you look
8 at even the state law arguments, it's not clear. The
9 inherent funding authority is limited, and this is discussed
10 in Grand Traverse because the funding unit has to pay for
11 operations that are, quote, "reasonable and necessary for the
12 court to carry out its mandate." And there was a big
13 question there about whether the local funding units had to
14 pay more or had to pay extra because they hadn't, and the
15 court --

16 THE COURT: And by "extra," you mean relating to
17 judgments?

18 MS. LENNOX: No. I mean relating to operations. At
19 the time there were some statutes that would have required
20 increased funding that was never -- that wasn't funded, and
21 so the local jurisdiction sued and said, hey, you have to
22 fund, and the courts said actually, no, we don't.

23 The Michigan Supreme Court found at page 146 of that
24 opinion that the court has to operate at a serviceable level,
25 not the optimal level, and what a serviceable level means --

1 that the operations of the court will be carried out in a
2 barely adequate manner, but they'll be carried out, and
3 that's all that the inherent power can force if the funding
4 unit doesn't pay.

5 So what we're faced with here is exactly the two
6 harms that Mr. Gregg and I discussed for your Honor. I
7 suppose the city could say, especially given all the past
8 problems with the 36th District Court operations, that, yeah,
9 we'll have suboptimal service if we can't -- if there's a
10 funding hole, but it's not something that the city would want
11 to do.

12 This ultimately, I think, is an issue without a
13 current answer in state law, and it's going to have to be
14 figured out, and I don't think your Honor is the one to
15 figure it out. I think we're in a matter of first impression
16 in Michigan, but what we're asking for today is pretty
17 limited related to that. All we're asking for is sort of the
18 preservation of the status quo and the breathing room
19 extended so that the court and the city and the state and
20 whoever else needs to be involved in this conversation can
21 figure it out because I don't think there's an answer in
22 state law. There's no clear answer right now. And all we're
23 saying is, you know, we are asking your Honor to extend the
24 stay simply so that the court's accounts that the court has
25 that get swept into the city on a periodic basis can't be

1 garnished so that their operations are not disrupted for the
2 period of time of this bankruptcy. That's all we're asking
3 for.

4 THE COURT: So if a plaintiff in any of these
5 actions sought a ruling by injunction or declaratory relief
6 or whatever appropriate action in the state courts that
7 somehow the state is responsible to pay on whatever judgments
8 it's awarded, the city wouldn't object to that?

9 MS. LENNOX: I don't think that's covered by what
10 we're asking for today.

11 THE COURT: Does the city plan to pursue any such
12 relief?

13 MS. LENNOX: I don't think the city has a current
14 plan to do that. What the city was hoping to do is to have,
15 again, discussions with the court, perhaps discussions with
16 the state. I think the court until perhaps today may have
17 had a different view from the city's about whether they have
18 a claim against the city and whether they can force us to pay
19 on a pre-petition basis, so I think those discussions have to
20 continue, and I think we need the time to let those continue.

21 THE COURT: Mr. Gregg, does the court have any such
22 plan?

23 MR. GREGG: Any plan with respect to payment of the
24 claims that are not satisfied?

25 THE COURT: With respect to pursuing any right it

1 may have against the State of Michigan to reimburse it or to
2 have them or it pay these judgments.

3 MR. GREGG: No, it does not, your Honor. It
4 believes it receives its funding solely from the city.

5 THE COURT: Oh, so the court agrees with Mr.
6 Schneider.

7 MR. GREGG: Yes.

8 THE COURT: Okay. Thank you. Any further rebuttal?

9 MS. LENNOX: Just two very quick points, your Honor.
10 There is -- there was a question about whether the monies
11 that come into the court's accounts, the fines and the costs,
12 are actually city property, and, again, I think there's been
13 a difference of view on that. Again, I point to the Michigan
14 statutes, and Section 600.8379, Section 1, says that the
15 fines and costs assessed in the District Court shall be paid
16 to the clerk of the court, who shall appropriate them as
17 follows, and then it talks about how it gets distributed
18 between the state and the county and the city. If we thought
19 that these monies in these accounts were the city's, again,
20 we wouldn't be here today.

21 THE COURT: The statute gives the city a claim --

22 MS. LENNOX: Correct.

23 THE COURT: -- to that money or a portion of that
24 money.

25 MS. LENNOX: Correct, but it doesn't necessarily say

1 they are the city's funds clearly. I mean certainly if it
2 had been that clear, this would be an easier thing to deal
3 with. And then with respect to the due process arguments
4 regarding discovery --

5 THE COURT: But do you argue -- let's just pin this
6 down -- that any attempt to garnish those funds would be an
7 attempt to exercise control over property of the city to the
8 extent that property was its claim against that account?

9 MS. LENNOX: We could argue that, your Honor. The
10 difficulty there is that the funds are commingled, and I
11 can't trace and say -- other than an inchoate claim, I can't
12 point and say those dollars are mine, and that's the
13 difficulty with this arrangement. Again, if it were
14 easier -- if it was an easier arrangement, it would be an
15 easier case to make, although I do not --

16 THE COURT: Well, wait. The money in the court's
17 account, all of that goes to the city, doesn't it?

18 MS. LENNOX: It goes to the city, again --

19 THE COURT: Or the state?

20 MS. LENNOX: -- but as a paying agent. Again, I
21 believe -- and Mr. Gregg can correct me if I'm wrong -- that
22 all that money gets swept into a city account, but it doesn't
23 mean that it's all the city's money. Some of it has to go to
24 the state and the counties under the allocations set --

25 THE COURT: Oh, all right.

1 MS. LENNOX: -- forth in the statute.

2 THE COURT: So does the city then pay the state, or
3 does the court pay the state?

4 MR. GREGG: I believe that the court pays the state,
5 the county, and the city.

6 MS. LENNOX: Out of that account.

7 MR. GREGG: Out of the accounts.

8 THE COURT: Okay.

9 MS. LENNOX: I stand corrected, your Honor.

10 THE COURT: All right.

11 MS. LENNOX: I stand corrected, your Honor. But,
12 again, we don't have tracing to specific proceeds, which
13 would have made that a lot easier. And then just finally,
14 with respect to the due process arguments, I think the
15 arguments regarding discovery were expressly considered and
16 rejected by the Sixth Circuit in Canonsburg Environmental
17 Associates versus Tully Construction Company back in 1996, so
18 your Honor and I has had a colloquy about the due process on
19 this issue before.

20 THE COURT: Right.

21 MS. LENNOX: Thank you.

22 THE COURT: Ms. Clark, anything further?

23 MS. CLARK: A couple of points, your Honor. First
24 of all, the moving party has a burden to show the harm to the
25 debtor, and they cannot with certainty say that there would

1 be any harm. The second thing I wanted to point out is that
2 this -- the motion is pretty broad. It's seeking to stay all
3 legal proceedings, not only against the 36th District Court
4 but its officers, employees, agents, and representatives.

5 THE COURT: Well, it's seeking to stay collection of
6 any judgments or awards that are made against them.

7 MS. CLARK: Right. It's my understanding that there
8 is a damage claim against a retired judge, and so I don't
9 know if that's going to cover that --

10 THE COURT: Um-hmm.

11 MS. CLARK: -- if your Honor does --

12 THE COURT: All right. Well, we'll get that
13 clarified. What else?

14 MS. CLARK: Okay. That's all, your Honor.

15 THE COURT: All right. What's the city's position
16 on that specific claim?

17 MS. LENNOX: Your Honor, I have confirmed with the
18 counsel for the District Court on this, there being no
19 indemnification rights from the court that would then
20 derivatively flow to the city, we don't believe that that
21 would be stayed because it would not affect either the court
22 services or --

23 THE COURT: So it's not your request to stay
24 collection of that action against --

25 MS. LENNOX: Correct.

1 THE COURT: -- that retired judge?

2 MS. LENNOX: Correct.

3 THE COURT: All right. Thank you. All right. It's
4 now five to eleven. Okay. Give me until 11:20, and we'll
5 reconvene then for a decision.

6 THE CLERK: All rise.

7 THE COURT: And please recall my admonition to keep
8 your conversations either in the courtroom here or on the 1st
9 floor, but no conversations at all in the hallway. If you're
10 going to be in the hallway, you have to be heading to the
11 elevator, not lingering out there. Thank you.

12 THE CLERK: Court is in recess.

13 (Recess at 10:57 a.m. until 11:20 a.m.)

14 THE CLERK: Court is in session. Please be seated.
15 Recalling Case Number 13-53846, City of Detroit, Michigan.

16 THE COURT: The record should reflect that counsel
17 are present. The matter is before the Court on a motion to
18 extend the stay that was filed by the city. The city seeks
19 to extend the stay to claims against the 36th District Court.

20 In evaluating this motion, the Court takes into
21 account the traditional four factors that would otherwise be
22 applicable in the context of a request for a preliminary
23 injunction. Those four factors are whether the moving party
24 is reasonably likely to succeed on the merits of its claim,
25 the extent to which the moving party would be harmed if the

1 requested stay is denied, the extent to which the party or
2 parties opposing the motion would be harmed if the stay is
3 granted, and then finally any public interest considerations
4 that are pertinent. These are not discrete four factors that
5 the moving party -- excuse me -- must meet in order to be
6 granted the relief it seeks. They are, rather, four factors
7 or considerations that the Court should take into account in
8 weighing and balancing them to determine whether its
9 discretion should be exercised in favor of granting the
10 motion. The matter is committed to the sound discretion of
11 the Court.

12 Addressing first, therefore, the first
13 consideration, which is whether the moving party is
14 reasonably likely to succeed on its claim, in the context of
15 a motion to extend the stay, what this sort of standard
16 language refers to is whether the bankruptcy itself is
17 frivolous or not. The point here is that if the bankruptcy
18 is frivolous, it would be inappropriate to stay creditors,
19 especially creditors who have claims not against the city but
20 third parties as here. There's nothing before the Court from
21 which it could find that this bankruptcy is frivolous by any
22 means. Obviously eligibility is hotly contested as perhaps a
23 plan of adjustment will be, but there's nothing to suggest
24 the bankruptcy is a frivolous endeavor.

25 On the issue of harm to the city if the requested

1 stay is denied, the record does reasonably clearly establish
2 that if the bank accounts of the 36th District Court are
3 garnished to pay judgments against that court, those funds
4 will not be available to be paid to the city, and at that
5 point the city will -- excuse me again -- the city will be
6 forced to make a choice as to what services to further
7 reduce, whether it would be the court itself or, if not the
8 court, some other services. The record before this Court
9 already establishes that the city is not in a position to
10 provide its citizens with an adequate or minimal level of
11 city services, and so any kind of action such as might occur
12 if the stay is denied that would further reduce the city's
13 ability to provide these basic services to its citizens and
14 residents is substantial harm.

15 Addressing then the issue of harm to the parties
16 opposing the motion should the stay be granted, there's
17 nothing specific in the record from which the Court could
18 find any harm other than the harm that other injured parties
19 who have claims against the city are being asked to endure as
20 a result of the bankruptcy stay or, indeed, the harm that
21 really all creditors are being asked to endure as a result of
22 the stay. By that, the Court does not mean to diminish that
23 harm. It is likely substantial, especially in the context of
24 individuals whose claims are for back pay.

25 Finally, addressing the issue of the public

1 interest, the Court has previously observed that in the
2 context of a municipal bankruptcy, issues of considering the
3 public interest largely, if not completely, overlap with
4 considerations of the city's interest because the city is a
5 public body, and so in the context of this case, the public
6 interest would be for the city to maintain whatever resources
7 it can, including the funds from the 36th District Court, to
8 maintain whatever level of services it can, inadequate as
9 they are.

10 Therefore, on balance, the Court concludes that this
11 motion for stay should be granted. Having said that, there
12 are several conditions on this which the order must reflect.
13 Ms. Lennox, I will ask you to prepare a revised order
14 granting your motion, have it approved as to form by Ms.
15 Clark, and then submit it to the Court. So clearly at the
16 city's request here we are only talking about a stay of
17 actions that have arisen pre-petition. This order does not
18 stay any action or effort by anyone to seek collection of an
19 arbitration award or a judgment against the State of Michigan
20 or any of its agencies. This stay only stays attempts to
21 collect on judgments or arbitration awards against the 36th
22 District Court, not their liquidation, and it only applies to
23 collection of monetary claims. It does not apply to stay the
24 enforcement of any injunctive relief or prospective wage
25 relief. Anything further, counsel?

1 MS. LENNOX: No, your Honor.

2 THE COURT: Ms. Clark? Oh, there's one other that I
3 meant to mention. This stay does not apply to stay
4 enforcement of what is apparently the one claim against the
5 one judge or retired judge for which the city has no
6 indemnification obligation. Now, anything further?

7 MS. CLARK: No, your Honor.

8 THE COURT: All right. That's all then.

9 THE CLERK: All rise. Court is adjourned.

10 (Proceedings concluded at 11:29 a.m.)

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WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

October 29, 2013

Lois Garrett